FILED
MAY 23 1956
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1955

No. 496

NATIONAL LAWYERS GUILD,

Petitioner,

v.

HERBERT BROWNELL, JR., Attorney General of the United States.

PETITION FOR REHEARING

The National Lawyers Guild petitions for a rehearing of the order denying its petition for certiorari entered May 7, 1956, Justices Black and Douglas noting their dissent.

We respectfully call to the attention of Justices Reed, Minton, and Clark that denial of certiorari appears inconsistent with their dissenting opinion in *Communist Party v. Subversive Activities Control Board,* No. 48 this Term, decided on April 30, 1956, after the petition for certiorari was filed herein. That dissenting opinion objected to returning a case for further proceedings "to a Board whose very existence is challenged on constitutional grounds." It was objected that, "We are asking the Board to pass on the credibility of witnesses after we have refused to say whether it has the power to do so."

In view of the importance and substantial nature of the questions relating to the constitutional power of the At-

torney General to list organizations as "subversive," etc., we assume that certiorari was denied in the case at bar on the ground of the decision below, namely, that petitioner must exhaust its administrative remedy of a hearing before the Attorney General. But we have also "challenged on constitutional grounds" the right of the Attorney General to list organizations and also his right to proceed by way of interrogatories. Thus we have challenged the constitutional existence of the Attorney General as an arbiter of organizations, just as much as the Communist Party challenged the right of the Subversive Activities Control Board to be such an arbiter.

Nor would granting the petition be inconsistent with the majority opinion in the Communist Party case since here too the "untainted administration of justice" and "fastidious regard for the honor of the administration of justice" suggests that the petitioner should not be required to undergo the ordeal of a pre-adjudged proceeding conducted under rules calculated to result in almost certain death.

Respectfully submitted,

Osmond K. Fraenkel,
Robert W. Kenny,
Earl B. Dickerson,
Joseph Forer,
Attorneys for Petitioner.

Certificate

I certify that this petition is presented in good faith and not for delay and is restricted to an intervening circumstance considered by counsel to be of substantial effect.

May 25, 1956.

OSMOND K. FRAENKEL.